

ORIGINAL



0000138767

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

GARY PIERCE, CHAIRMAN

PAUL NEWMAN

SANDRA D. KENNEDY

BOB STUMP

BRENDA BURNS

2012 AUG 24 P 4:26

AZ CORP COMMISSION  
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

AUG 24 2012

DOCKETED IN

JM

IN THE MATTER OF THE FORMAL  
COMPLAINT AGAINST MOHAVE  
ELECTRIC COOPERATIVE, INC.  
FILED BY ROGER AND DARLENE  
CHANTEL.

DOCKET NO. E-01750A-09-0149

MOHAVE ELECTRIC COOPERATIVE,  
INCORPORATED'S RESPONSE TO  
COMPLAINANT'S AUGUST LETTERS

Mohave Electric Cooperative, Incorporated ("MEC" or "Respondent") hereby responds to the August 8, 2012 and August 13, 2012 letters of Mr. Roger Chantel ("Complainant") filed in the above-referenced Docket. MEC disputes Mr. Chantel's accusations that the Arizona Corporation Commission ("Commission" or "ACC") is "not putting any effort forward to help me," that his life is threatened by the condition of certain MEC lines and that MEC is required to file an application to abandon lines pursuant to A.A.C. R14-2-202B(1) and (2). MEC further disputes that the termination provisions cited by Complainant apply (as service was terminated four years ago) or that Complainant has satisfied the preconditions for securing service from MEC.

MEC'S LINE WAS DE-ENERGIZED IN 2008 AT MOHAVE  
COUNTY'S REQUEST DUE TO AN UNSAFE CONDITION  
CREATED BY COMPLAINANT

During the summer of 2008, Complainant commenced construction of an unconventional 6,200 square foot structure, a portion of which was located under MEC overhead lines that served Complainant's property, as well as signals of the Burlington

1 Northern Santa Fe Railroad (BNSF RR) Claiming the structure was a work of art,  
2 Complainant refused to apply for a building permit. During the months of August and  
3 September, Complainant failed to comply with stop work orders issued by Mohave County  
4 and continued to construct the structure. On two separate occasions, an MEC employee  
5 measured the clearance between the structure and the MEC lines and confirmed the minimum  
6 clearance required by the National Electric Safety Code ("NESC") was not provided. Not  
7 only was this an unsafe condition for the structure and the public, but any electrical incident  
8 around the structure causing a circuit breaker to open could have also curtailed MEC's supply  
9 of power to a nearby railroad train signal along the side of the BNSF RR tracks. MEC was  
10 therefore authorized to terminate electric service without notice for the "existence of an  
11 obvious hazard to the safety or health of the consumer or the general population or the utility's  
12 personnel or facilities." A.A.C. R14-2-211(B)(1)(a).

13 On or about September 15, 2008, Darrell Riedel of Mohave County confirmed that  
14 Complainant was in violation of multiple stop work orders from Mohave County. MEC sent  
15 written notice to Complainant that the structure violated NESC clearance requirements and  
16 that, as a result, the Mohave County Building Inspection Division had requested MEC to  
17 immediately disconnect service. Complainant was also advised that he would be responsible  
18 for the cost of re-locating the existing overhead electric lines.

19 After consultation with Mr. Olea and Ms. Regan of the ACC, and providing Ms.  
20 Chantel notice on-site, MEC de-energized its lines overlying the structure the afternoon of  
21 September, 16, 2008. MEC also proceeded to relocate the overhead line away from the  
22 structure so service could be provided to the BNSF RR.

23 Since being disconnected on September 16, 2008, the Chantels have never met the  
24 conditions to receive electric service at this location (which includes payment for the  
25

1 relocation of the line), nor have they authorized MEC's entry on their property or agreed to  
2 pay for the removal of MEC's de-energized overhead lines.

3 THE DE-ENERGIZED LINES AND POLES ON  
4 COMPLAINANT'S PROPERTY DO NOT PRESENT A  
5 HAZARDOUS CONDITION

6 MEC poles and de-energized lines pose no hazard to Complainant. The poles are not in  
7 danger of falling and the de-energized lines, according to the information alleged by  
8 Complainant, remain 19.9 feet above the ground, at their lowest point. MEC is willing to  
9 remove the lines at Complainant's cost, but Complainant has instructed MEC to never trespass  
10 on his property and has refused to pay the cost of the removal. MEC cannot remove the lines  
11 without Complainant's cooperation.

12 NO ABANDONMENT OCCURRED WHEN THE LINE WAS DE-  
13 ENERGIZED AT THE COUNTY'S REQUEST TO PROTECT  
14 THE PUBLIC, BUT THE LINES NO LONGER SERVE  
15 THE PUBLIC

16 As previously explained, the MEC lines were de-energized to protect the public at the  
17 request of Mohave County pursuant to A.A.C. R14-2-211(B)(1)(a). The structure still exists  
18 under the de-energized lines and therefore still constitutes a hazardous condition which  
19 precludes energizing those lines. This condition has existed since MEC de-energized the lines  
20 in September 2008 at Mohave County's request.

21 Due to the existence of a hazardous condition created by Complainant, MEC  
22 constructed a new parallel line to enable MEC to provide service to BNSF RR signals. The  
23 new line is also capable of providing service to Complainant's property, but Complainant has  
24 never satisfied the pre-conditions for receiving service from that line.

25 Clearly the de-energized line is no longer necessary and is not currently useful in  
providing service to the public. The provisions of A.R.S. §40-285 and A.A.C. R14-2-202  
simply have no application under these circumstances. Moreover, Complainant's actions in

1 creating the hazardous condition despite stop work orders issued by Mohave County are  
2 tantamount to requesting electric service be disconnected. A.A.C. R14-2-202(B)(3).

3 RULES RESTRICTING TERMINATION ARE INAPPLICABLE

4 Complainant's August 21, 2012 letter cites to A.A.C. R14-2-211(A)(5) and asks the  
5 Commission to issue an order requiring MEC to show cause why it will not re-establish his  
6 service. As the Commission is well aware, the cited rule has nothing to do with re-  
7 establishing service, but deals with 'terminating' service where the customer has an 'inability  
8 to pay.' Assuming Complainant could establish through medical documentation (none having  
9 been provided)<sup>1</sup> that, in the opinion of a licensed medical physician, termination would be  
10 especially dangerous to Complainant's health or that life support equipment is used in the  
11 home dependent on utility service for operation, the rules have no application. Service was  
12 terminated in September 2008 pursuant to A.A.C. R14-2-211(B)(1)(a) due to a hazardous  
13 condition, not due to Complainant's inability to pay. Now Complainant is seeking to re-  
14 establish service that was duly terminated four years ago.

15 COMPLAINANT REFUSES TO COMPLY WITH THE  
16 CONDITIONS FOR ESTABLISHMENT OF SERVICE

17 MEC has not refused to provide service to Complainant. Complainant, however, has  
18 failed to take any step to meet the preconditions for establishment of service. For example, by  
19 letter dated August 1, 2012 MEC's legal counsel at MEC's direction wrote to Complainant as  
20 follows:

21 "As to the second request, which is for electric service that request is  
22 subject to the same conditions all prospective MEC customers

---

23  
24 <sup>1</sup> Complainant advised about two years ago that he has started "treatment" with the Veterans  
25 Administration that relates to "post-stress disorder" which had its origins in Complainant's  
involvement in the Vietnam War. Complainant has never supplied any documentation to support this  
claim. When asked about treatment for his "post-stress disorder" in a deposition, Complainant  
testified he had not commenced any mental stress or psychological treatment.

1 undergo, (*see, e.g.*, A.A.C. R14-2-203, 14-2-206 and 14-2-207)  
2 including, without limitation, executing an application for service,  
3 providing necessary easements and access, paying for line  
4 extensions related to the service, paying outstanding amounts due for  
5 the same class of utility service, and paying deposits. To date you  
6 have not complied with any of these standard membership service  
7 conditions so you are not presently eligible for member service.  
8 MEC notes that electric service could not be provided to your  
9 property without the re-routed lines, for which you are obligated to  
10 pay \$47,912.04, plus accruing interests and costs pursuant to the July  
11 2, 2012 judgment.

12 MEC also notes that your reference to A.A.C. R14-2-211 A5 and 6  
13 is misplaced. Those ACC rules relate to grounds for termination of  
14 service, not requests to initiate service.

15 If you wish to further discuss the removal of the poles and lines or  
16 the conditions of extending electric service to your residence, please  
17 direct your correspondence to the undersigned.”

18 A copy of the August 1, 2012 letter is attached as Exhibit A. Complainant has not responded.

19 ACTION ON COMPLAINANT’S COMPLAINT WAS STAYED  
20 AT HIS REQUEST

21 Complainant asserts that the Commission is not putting any effort forward to help him  
22 and has even asked the State Attorney General to investigate the Commission’s inaction.<sup>2</sup> The  
23 Hearing Division had ruled on MEC’s Motion to Dismiss, conducted a prehearing conference  
24 and set the matter for hearing on January 20, 2010. However, on December 10, 2009, the  
25 Complainant requested the Commission stay consideration of the complaint and vacate the  
hearing to allow him to pursue a judicial resolution in Mohave County Superior Court. The  
request was granted over MEC’s objection.

<sup>2</sup> By letter dated August 21, 2012 filed in this docket, the Attorney General’s Office has advised they lack authority to investigate the Commission over the matters asserted by Complainant.

1 The Superior Court has granted MEC summary judgment on all nine counts asserted by  
2 Complainant's complaint. A copy of the ruling is attached as Exhibit B. Complainant has  
3 now filed a Notice of Appeal with the Arizona Court of Appeals. His opening brief is due  
4 August 30, 2012.

5 SUMMARY

6 Complainant foolishly constructed an unpermitted survivalist structure of 6,200 square  
7 feet underneath MEC's electric lines without providing adequate clearance. Mohave County  
8 issued stop work orders, which Complainant ignored. Concerned for the public welfare and  
9 safety, Mohave County instructed MEC to de-energize the overhead lines. MEC complied  
10 and has not served Complainant since September 2008. Instead of going to hearing on his  
11 ACC complaint, Complainant asked to stay this proceeding and pursued an action in Mohave  
12 County Superior Court and has lost. Despite his false allegations of wrongful conduct against  
13 MEC and the Commission, the Complainant has been treated fairly by both entities.  
14 Complainant is welcome to apply for service, but Complainant must first comply with the pre-  
15 conditions for the establishment of service before service will be established.

16 DATED this 24<sup>th</sup> day of August, 2012.

17  
18 CURTIS, GOODWIN, SULLIVAN,  
UDALL & SCHWAB, P.L.C.

19  
20  
21 By: 

22 Michael A. Curtis  
Larry K. Udall  
501 East Thomas Road  
23 Phoenix, Arizona 85012-3205  
24 Attorneys for Mohave Electric  
25 Cooperative, Inc.

1 PROOF OF AND CERTIFICATE OF MAILING

2 I hereby certify that on this 24<sup>th</sup> day of August, 2012, I caused the foregoing document  
3 to be served on the Arizona Corporation Commission by delivering the original and thirteen  
4 (13) copies of the above to:

5 Docket Control  
6 Arizona Corporation Commission  
7 1200 West Washington  
8 Phoenix, Arizona 85007

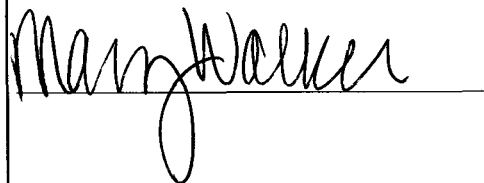
9 COPY of the foregoing hand delivered  
10 this 24<sup>th</sup> day of August, 2012 to:

11 Belinda Martin, Administrative Law Judge  
12 Hearing Division  
13 Arizona Corporation Commission  
14 1200 West Washington  
15 Phoenix, Arizona 85007

16 Wes Van Cleve, Esq.  
17 Scott Hesla, Esq.  
18 Legal Division  
19 Arizona Corporation Commission  
20 1200 West Washington  
21 Phoenix, Arizona 85007

22 Copy of the foregoing mailed  
23 this 24<sup>th</sup> day of August, 2012 to:

24 Roger Chantel  
25 Darlene Chantel  
10001 East Highway 66  
Kingman, Arizona 86401

26 

**COMMISSIONERS**  
MIKE GLEASON - Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
KRISTIN K MAYES  
GARY PIERCE

BRIAN C. MCNEIL  
Executive Director

ARIZONA CORPORATION COMMISSION

November 5, 2008

Mr. Roger Chantel  
10001 E. Hwy. 66  
Kingman, AZ 86401

RE: Informal Complaint No 2008-71811

Dear Mr. Chantel:

The Arizona Corporation Commission ("Commission") has reviewed your informal complaint, filed September 30, 2008. After receiving your call, Staff of the Commission's Utilities Division ("Staff") contacted Mohave Electric Cooperative ("MEC" or "Company") to begin its investigation. Having heard from both sides in this dispute, Staff has arrived at the following operative facts:

At some time prior to September 12, 2008, you began the construction of some type of structure on your property. The structure was being erected in the area directly beneath the lines used by MEC to provide electrical service to your house. MEC states that the area occupied by the structure falls within MEC's utility easement, limiting MEC's access to the line. The construction came to the attention of Mohave County Planning and Zoning ("MCPZ"). Because the construction constituted a public safety hazard, MCPZ issued Stop Work Orders and advised you that your electric service could be disconnected if the structure were completed. You met with representatives of both MCPZ and MEC, and the issue was discussed. At some point thereafter, construction was completed.

On September 12, 2008, MCPZ issued a letter to MEC ordering the Company to immediately de-energize the line being used to provide service to your property. MEC contacted Staff, and Staff recommended that MEC make an effort to contact you personally prior to de-energizing the line. Because the line was also being used to serve a railroad signal, de-energizing it would result in cutting power to the signal, an obviously unacceptable situation. It was therefore necessary for MEC to re-route the line to avoid your property and continue to serve the signal. MEC did so, at a cost of approximately \$12,000.00. Construction was completed on the re-routed line on September 16, 2008. MEC then spoke with Mrs. Chantel at your residence, and the line serving your residence was then de-energized on that same day.



Page 2

On October 21, 2008, MEC sent you a bill for the cost of re-routing service around your property. Although you have paid your monthly electric service bill, you have not paid MEC the re-routing charges, and MEC has refused to reinstate your service.

In your complaint, you have asked Staff to review several issues. Staff hereby provides its findings:

The primary relief you have requested is that the Commission order MEC to reinstate your electric service. Unfortunately, the Commission can not do that. The property that is the subject of this dispute is located within Mohave County. As a political subdivision of the State of Arizona, Mohave County has jurisdiction over public health and safety issues within the County. If an agency of Mohave County has interpreted Mohave County's own statutes and determined that the structure on your property constitutes a danger to the health and/or safety of the public within Mohave County, then the County has authority to take action to remedy such situations. Because MEC provides service within the County, MEC is subject to the authority of the County. MEC has no choice but to follow the lawful orders of MCPZ. Since the reason MCPZ ordered MEC to de-energize the power lines to your home resulted from the County's interpretation and enforcement of its own statutes, the Commission is without authority to order MEC to take any action contradictory to what MCPZ has directed them to do. Therefore, the Commission can not order MEC to reinstate your electric service under these conditions.

At some point, the structure at issue was labeled "art work", but frankly, the label does nothing to change the nature of the dispute. If Mohave County has found that the "art work" on your property compromises the safety of the Mohave County public, the County has the authority to take action in the public's interest.

Although A.A.C. R14-2-206(C)(2) provides additional authority for MEC to have disconnected your service in the instant circumstances, MEC did not rely on that rule in this matter. The instant dispute resulted entirely from the findings made by Mohave County. In any case, it appears that your dispute over the structure is between yourself and Mohave County. Only Mohave County has the authority to grant you the relief you have requested. The Commission is not the proper forum in which to resolve this dispute.

Also at issue in your complaint is the manner in which service was terminated. The Commission does have procedures in place governing the disconnection of service. Specifically, A.A.C. R14-2-211(C) authorizes a utility to terminate service subject to the notification requirements of R14-2-211(D).

Mohave County has stated that during the previously-mentioned meeting which took place between you, Mohave County, and MEC, you were advised that if you did not remove the structure from your property, your electric service could be terminated. Once the County ordered MEC to de-energize the line, the actual termination work took a period of four days to complete. During that time, you were aware of the nature of the

Page 3

activity. Mrs. Chantel was provided with formal notice of the disconnection on the final day of the project. Given that you were formally told disconnection would result from a failure to cease construction, it can not be argued that you did not have the notice called for in the rule.

Further, R14-2-211(B) allows termination *without* notice due to the existence of an obvious hazard to the public safety or health of the general public. Mohave County found such a safety hazard. Clearly the dispute in this matter results from Mohave County's findings and again, the Commission is not the proper forum in which to dispute those findings.

It is important to note that pursuant to A.A.C. R14-2-211(B)(2), once service has been terminated, the utility is not required to restore service until the conditions which resulted in disconnection have been corrected. As it applies to your dispute here, until Mohave County finds that the safety issue has been resolved, MEC is not required to restore your service. In addition, you have raised the issue as to whether or not MEC has the proper easements required to service your property. R14-2-206(C) provides that a failure of the customer to grant the easements necessary to provide service may constitute grounds for a utility's refusal to provide service. If it is your assertion that MEC does not have the proper easements, that issue should be resolved within any discussion of restoration of service.

You have raised the issue as to whether service might be restored to your residence using the newly-constructed line currently being used to circumvent your property and provide service to a railroad signal crossing. Unfortunately, such an arrangement is not possible. The line in question is being used merely as a backup line and has not been built according to the specification required for primary residential service. Providing service using the new line would in itself constitute a safety issue, and the utility is prohibited from doing so.

As an additional concern, you have raised the issue of medical treatment for sleep apnea. However, as R14-2-211 makes clear, the utility is only prevented from termination of service in cases where the customer has a medical need coupled with an inability to pay. The termination of service to your property did not result from an inability to pay. In your case, termination resulted from a refusal to abide by County ordinance and Commission rules. While the Commission is certainly sympathetic to your needs, MEC's decision to terminate your service appears to conform to Commission rules and procedures, and the Staff finds that no action is warranted.

Additionally, you have questioned the authority of the utility to charge you for construction costs associated with the re-routing of your service line. However, such charges are fully within MEC's authority. R14-2-206(C)(2), mentioned previously, mandates that any utility encountering the safety issues at issue here take the steps necessary to eliminate the safety issue and authorizes the utility to do so at the customer's expense. MEC is clearly acting within its authority.

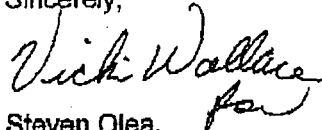
Page 4

Two final issues you have raised are the distance between utility poles and the resulting amount of line sag that results. MEC places its poles based upon issues of clearance from ground to wire and from pole to pole. These standards are dictated by professional code. According to MEC, the lines in question were built within code specifications in 1949 and remain within tolerances today. Based upon this limited inquiry, the Staff does not believe that MEC's lines are out of compliance with any of the Commission's mandates.

Based upon these facts and circumstances, Staff does not believe that MEC is in violation of Commission rules or procedures, and this informal complaint will be dismissed and closed.

If you have further questions regarding this matter, you may contact Vicki Wallace at 602-542-0818 or Connie Walczak at 602-542-0291.

Sincerely,



Steven Olea,  
Assistant Director  
Utilities Division

Cc: rogerchantel@frontiernet.net (letter also sent via e-mail at customer request)

# EXHIBIT A

The Law Offices of  
**CURTIS, GOODWIN, SULLIVAN,  
UDALL & SCHWAB, P.L.C.**

501 East Thomas Road  
Phoenix, Arizona 85012-3205

Michael A. Curtis  
Susan D. Goodwin  
Kelly Y. Schwab

Telephone (602) 393-1700  
Facsimile (602) 393-1703  
E-mail [ludall@cgsuslaw.com](mailto:ludall@cgsuslaw.com)  
[www.cgsuslaw.com](http://www.cgsuslaw.com)

William P. Sullivan  
Larry K. Udall  
Phyllis L.N. Smiley

Of Counsel  
Joseph F. Abate

REFER TO FILE NO. 1234-7-44-2

August 1, 2012

VIA E-MAIL AND CERTIFIED MAIL

Roger Chantel  
Elizabeth Chantel  
10001 East Highway 66  
Kingman, Arizona 86401

Re: Request for New Service

Dear Mr. and Mrs. Chantel:

Our offices act as General Counsel to Mohave Electric Cooperative, Inc. ("MEC"). MEC has received your correspondence dated July 18, 2012 wherein you have made many allegations. We have been directed to respond. MEC disagrees with your characterization of dealings with MEC and with your representations of the alleged facts and your conclusions concerning the determinations of the courts over the past few years.

As you are aware, the Mohave County Superior Court entered a judgment against you and in favor of MEC on July 2, 2012 granting MEC's motion for summary judgment and denying all of your asserted various claims for relief. You have filed a notice of appeal, so the matter remains in litigation. However, the judgment of the Superior Court remains in full force pending a final outcome on the appeal. The judgment amounts you owe are directly associated with your prior utility service.

Your letter includes two requests: 1) that MEC file an "application for abandonment" with the Arizona Corporation Commission ("ACC") relative to the poles and lines on your property that were de-energized at the direction of Mohave County due to the unsafe condition created when you constructed a structure directly under the line; and 2) for electric service to your residence which previously received service from the de-energized lines.

Mr. and Mrs. Chantel  
August 1, 2012  
Page 2

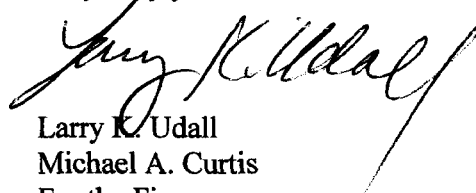
As to the first request, MEC notes that throughout the judicial proceedings you have declined to pay the cost of removal or to permit MEC to enter your premises to remove its poles and lines which remain its property. MEC does not perceive the poles on your premises to be subject to an abandonment application with the ACC. The lines were de-energized pursuant to the direction of Mohave County. Additionally, A.R.S. §40-285.C makes ACC consent unnecessary where the facilities are no longer necessary or useful in the performance of MEC's duties to the public.

As to the second request, which is for electric service that request is subject to the same conditions all prospective MEC customers undergo, (*see, e.g.*, A.A.C. R14-2-203, 14-2-206 and 14-2-207) including, without limitation, executing an application for service, providing necessary easements and access, paying for line extensions related to the service, paying outstanding amounts due for the same class of utility service, and paying deposits. To date you have not complied with any of these standard membership service conditions so you are not presently eligible for member service. MEC notes that electric service could not be provided to your property without the re-routed lines, for which you are obligated to pay \$47,912.04, plus accruing interests and costs pursuant to the July 2, 2012 judgment.

MEC also notes that your reference to A.A.C. R14-2-211 A5 and 6 is misplaced. Those ACC rules relate to grounds for termination of service, not requests to initiate service.

If you wish to further discuss the removal of the poles and lines or the conditions of extending electric service to your residence, please direct your correspondence to the undersigned.

Very truly yours,



Larry K. Udall  
Michael A. Curtis  
For the Firm

cc: Mr. Arden Lauxman, Mohave Electric

# EXHIBIT B

NOTE FILE NO. 1234-7-44-2  
XEROX ALL PLEADINGS ✓  
COPIES TO MAC LKU MAW  
TMJ  
STAMPED DATE  
ROUTED TO MAC LKU MAW  
DO NOT FILE UNTIL  
ALL ITEMS CHECKED  
AND INITIALED CB

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MOHAVE

HONORABLE LEE F. JANTZEN  
DIVISION IV  
DATE: May 21, 2012

\*je

NOTICE/RULING/ORDER

DUSTIN R. CHANTEL and  
ELIZABETH D. CHANTEL, husband  
and wife,  
Plaintiffs,

vs.

No. CV-2009-02574

MOHAVE ELECTRIC COOPERATIVE, INC.,  
an Arizona non-profit corporation;  
JOHN and JANE DOES, I-X; BLACK and  
WHITE CORPORATIONS I-X,  
Defendants.

The Court took under advisement several motions after the March 28, 2012 oral argument. Those motions included Plaintiffs' Motion to Have a Judicial Determination on All Counts, Plaintiffs' Motion for Reconsideration to Reinstate Counts 4, 5 and 8; Defendant Motion for Reconsideration of Summary Judgment on Counts 1, 2 and 6; Defendant's Motion for Striking of Plaintiffs' Motion for Reconsideration; and Defendant Motion for Sanctions for Plaintiffs' Failure to Answer Interrogatories.

The Court has reviewed the pleadings, the relevant codes, statutes and case law and the oral argument of the two parties. The Court has also considered the whole history of this file including prior rulings on motions.

This case arises with the Plaintiffs building in 2008 a 6,200 square foot building, originally described by Plaintiffs as "Artwork," too closely underneath Defendant Mohave Electric Cooperative (hereinafter "MEC") power lines, resulting in the Mohave County Special Services Division (hereinafter "MCSSD") directing MEC to de-energize the power lines. Plaintiffs then filed this lawsuit alleging multiple torts against MEC.

On November 9, 2011 during oral argument, Plaintiffs withdrew Count 3, Quiet

RECEIVED

MAY 21 2012

CURTIS, GOODWIN, SULLIVAN,  
UDALL, & SCHWAB, PLC



Title; and Count 4, Ejectment. If the Court has not done so already, based on Plaintiffs' withdrawal of the claims, **IT IS ORDERED dismissing Count 3, Quiet Title and Count 4, Ejectment without prejudice.**

On November 9, 2011 after oral argument, the Court granted MEC's Motion for Summary Judgment on Count 5, Recovery of Rents; Count 7, Intentional Infliction of Emotional Distress and on Plaintiffs' request for punitive damages. The Court has reviewed Plaintiffs' Motion for Reconsideration and the Response filed by MEC. Nothing has changed that raised any additional issues of fact since oral argument.

**IT IS ORDERED denying Plaintiffs' Motion for Reconsideration on Count 5, Recovery of Rents; Count 7, Intentional Infliction of Emotional Distress and on Plaintiffs' request for punitive damages.**

At that same hearing on November 9, 2011 the Court denied Defendant's Motion for Summary Judgment as it related to Count 1: Breach of Contract; Count 2: Breach of Covenant of Good Faith; and Count 6: Negligence and MEC's Motion for Summary Judgment on MEC's Counterclaim against Plaintiffs. This denial was a close call by the Court and done with the expectation and avowal by Plaintiffs that additional discovery would be forthcoming. Since that time Plaintiffs have not provided sufficient additional discovery to address the main issues that they have raised that might give rise to any of the pending causes of action. In retrospect, the Court denial of MEC's entire motion was incorrect.

With regard to Count 1: Breach of Contract, the only contract between the parties is the original contract where Plaintiffs joined the cooperative. Plaintiffs have not shown any specific terms of the contract being violated by MEC. Plaintiffs now argue that they built their building as a "safety" concern due to the position and condition of the MEC power lines. However, that issue was only raised in one letter in 2006 to MEC that is not sufficient to show that safety from the power lines was the reason for the construction of the building. Plaintiffs never took their concerns to the ACC, nor have they provided any evidence that the power lines were an actual safety concern. Nor does any evidence exist that, even assuming legitimate safety concerns existed at the time, that those concerns would have warranted allowing Plaintiffs to construct the building to protect them from these defensive lines. The evidence shows that MCSSD

direction to MEC to de-energize the power lines was based on safety concerns from having Plaintiffs' building having inadequate clearance from the power lines.

With regard to Count II: Breach of Contractual Obligation to Deal in Good Faith, having found that there has been no breach of contract there can be no finding MEC has breached any contractual obligation to deal in good faith.

With regard to Count VI: Negligence, Plaintiffs have failed to show MEC's actions to be negligent in any manner. Once again, the "safety" concern recently emphasized by Plaintiffs as the reason for building is more of a recent concern raised by the Plaintiffs that is without merit. The only legitimate safety issue in this case has been raised by MEC since the beginning and is what prompted the lines to be de-energized. MEC was not negligent in de-energizing the power poles. MEC had no choice due to actions by the Plaintiffs. The Plaintiffs' building is too close to the already existing power lines. Plaintiffs' building was built without warning, without permission and without finalizing legal issues that might have led to a resolution short of MEC being obligated to turn off the power.

**IT IS ORDERED granting MEC's Motion for Reconsideration on Counts 1, 2 and 6. IT IS FURTHER ORDERED granting MEC's Motion for Summary Judgment on Counts 1, Breach of Contract, Count 2, Breach of Contractual Obligation to Deal in Good Faith and Count 6, Negligence.**

**IT IS FURTHER ORDERED granting MEC's Motion for Summary Judgment on MEC's Counterclaim against Plaintiffs.**

The Court finds that MEC did not do anything wrong by turning off the power to the power lines above the Plaintiffs' building, that the Plaintiffs have failed to raise a *prima facie* case on any of the seven counts in the Complaint and that the matter of safety would have most appropriately raised before the ACC. Based on those findings, **IT IS FURTHER ORDERED that MEC is awarded attorney's fees in this matter.**

**IT IS FURTHER ORDERED denying MEC's Motion for Sanctions for Plaintiffs Failure to Answer Interrogatories.**

Based on the rulings above, the Court finds Plaintiffs' Motion for Judicial Determination of all Counts is moot.

Counsel for MEC is directed to file a Judgment consistent with the above rulings.

cc:

Roger and Elizabeth Chantel  
10001 East Highway 66  
Kingman AZ 86401  
Plaintiffs Pro Per

Michael A. Curtis\*  
Larry K. Udall  
**CURTIS, GOODWIN, SULLIVAN, UDALL & SCHWAB, P.L.C.**  
Attorneys for Defendant

Honorable Lee F. Jantzen  
Division IV